

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

OCT 10 1989

In re: DALE J. BLAIR and
LEOTA M. BLAIR,

Debtors.

ROBERT L. HOECKER
Clerk

DALE J. BLAIR and
LEOTA M. BLAIR,

Appellants,

v.

EDWARD J. NAZAR, Trustee,

Appellee.

No. 89-3093
(D. Kansas)
(D.C. No. 89-1020-K)

ORDER AND JUDGMENT*

Before **LOGAN, MOORE, and ANDERSON**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

On June 17, 1988 Dale J. and Leota M. Blair filed a voluntary petition for Chapter 7 relief under the Bankruptcy Code. Approximately five months later, the Blairs filed a pleading in the bankruptcy court entitled "Notice of Voluntary Dismissal of Voluntary Chapter 7." The trustee objected. The bankruptcy court sustained the trustee's objection and entered an order denying the Blairs' attempted voluntary dismissal. Thereafter, the Blairs appealed to the district court, which sua sponte issued an order dismissing the appeal. The Blairs appeal that dismissal to this court.

The Blairs contend that the bankruptcy court has no jurisdiction over them because they are not "debtors." In this regard they apparently refer to definition of "debtor" contained in 11 U.S.C. § 109(a) which provides: "[n]otwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, . . . may be a debtor under this title."

The Blairs argue that "the territorial jurisdiction of the United States is found only in" areas expressly ceded to the federal government by the states, which areas "encompass Washington, D.C., the federal enclaves within the States, and such territories and possessions which may be now owned by the United States." Brief of Appellants at 28. Therefore, being residents of Kansas, they do not reside or have a business or property in the United States; and, the United States has no jurisdiction over them or their property. The Blairs further contend that they have been denied their constitutional right to due process because

neither the bankruptcy court nor the district court permitted them a "trial" on the issue of their jurisdictional challenge.

It is settled law that this court has jurisdiction only over final decisions, judgments, orders, or decrees. 28 U.S.C. §§ 158(d), 1291. A district court order which has the effect of remanding a case to the bankruptcy court for further significant proceedings is not a final order for purposes of appeal. See In re Commercial Contractors, 771 F.2d 1373, 1375 (10th Cir. 1985). See also In re O'Connor, 808 F.2d 1393, 1395 n.1 (10th Cir. 1987); John E. Burns Drilling v. Cent. Bank of Denver, 739 F.2d 1489, 1491-92 (10th Cir. 1984); In re Benny, 791 F.2d 712, 717-19 (9th Cir. 1986). The order of the district court in this case is not a final order since it had the effect of remanding to the bankruptcy court for further proceedings in the Blairs' bankruptcy. The circumstances of this case do not fall within any exception to the rule just stated. The district court determined their jurisdictional challenge to be frivolous, and we agree.¹

Technically, since we dismiss this appeal on jurisdictional grounds, the Blairs' contention with respect to the jurisdiction of the bankruptcy court is preserved and may be reargued on

¹ The Blairs do not directly challenge the ground on which the bankruptcy court refused to let them dismiss their Chapter 7 proceedings, i.e. that it would not be in the best interest of the creditors and parties in interest. We note, however, that whether or not a voluntary dismissal will be permitted is within the sound discretion of the bankruptcy court. See, e.g., Matter of Atlas Supply Corp., 857 F.2d 1061, 1063 (5th Cir. 1988). The interests of the creditors are a critical consideration. See, e.g., In re Astin, 77 B.R. 537, 537-38 (Bankr. W.D. Va. 1987). Apparently the only cause advanced by the Blairs in support of their attempted voluntary dismissal is the reason stated on appeal, i.e. that they are not "debtors."

appeal from the final judgment of the bankruptcy court at the conclusion of the Blairs' bankruptcy proceedings. However, we caution them that sanctions can be imposed for filing legally frivolous appeals, and recommend that they consult counsel before attempting to pursue any later appeal on the ground raised herein. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge